IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 679 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA : Sd/-

HONOURABLE MR.JUSTICE KS JHAVERI : Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALLUBHAI KADVABHAI VASAVA - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NK MAJMUDAR for Appellant(s) : 1,
MR KP RAVAL for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 05/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal under Section 374 of the Code of Criminal Procedure has been preferred by the present appellant-accused being aggrieved and dissatisfied by the judgment and order of conviction dated 19.03.2007 passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No.72/2006 whereby he was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.2,000/-, in default, to undergo three months S.I. for the charge under Section 302 of the Indian Penal Code.

2. The case of the prosecution in short, is as under:

2.1 On 19.05.2006, the complainant viz., Bhikhiben wife of Manilal Jamalbhai Vasava resident of Parasi Faliyu, Daheli, Taluka : Valiya, District : Bharuch gave complaint before P.I. Valiya Police Station alleging

inter alia that she is residing at the above referred address along with her family and doing labour work. Her husband has expired ten years prior to the registration of the offence in an accident.

2.2 Three months prior to the incident, dispute took place between the son of the complainant, Dinesh (the deceased) and the appellant-accused. On the day of incident at about 5:30 a.m., when the deceased was sleeping in front of his house, the appellant-accused came with iron rod (Parai, which is used in agriculture activities) and, started abusing him and, thereafter, gave iron rod blow on the neck of the deceased. As a result of that, blood oozed out and the deceased fell down there itself. During that time, the complainant, her son, Vikesh, Ashmitaben, Shardaben woke up and saw the incident and, thereafter, the appellant-accused ran away from the place of offence with muddamal weapon (Parai).

2.3 On raising screams, surrounding persons,

Ramji Ichchha, Rakesh Ramesh, Govindbhai Saradhbhai etc. reached the place of offence, where they found that the deceased succumbed to the injuries. Accordingly, offence came to be registered with Valiya Police Station as C.R.No.I-53/2006 under Sections 302 and 504 of the Indian Penal Code.

3. On the basis of such complaint, the investigation was embarked upon. Investigation was handed over to P.I. Inquest panchnama was drawn in the presence of panchas, dead body was sent for postmortem, scene of offence panchnama was drawn, statements of various witnesses were recorded, body position panchama of the appellant-accused was drawn, muddamal weapon (Parai) was seized by drawing recovery panchanam at the instance of appellant-accused, seized the clothes of the deceased by preparing panchnama, wrote yadi for preparing map of scene of offence and sent the muddamal to FSL. On receiving FSL and postmortem reports, same were kept with the

investigation file.

4. At the end of investigation, chargesheet came to be submitted before the Court of Learned J.M.F.C, Valiya for the offence under Sections 302 and 504 of the Indian Penal Code. As the offence was exclusively triable by the Court of Sessions, same was committed to the Court of Sessions, Bharuch vide order dated 19.07.2006, which came to be numbered as Sessions Case No.72/2006.

5. On committal, the case was transferred and placed for trial before the learned Additional Sessions Judge, Bharuch who had initially framed charge against the appellant-accused for commission of the offences under Sections 302 and 504 of the Indian Penal Code. The charge was read over and explained to him. The appellant-accused pleaded not guilty to the charge and claimed to be tried and thereupon he was put to trial by the Court below.

6. To prove the case against the appellant-accused, the prosecution examined as many as

11 witnesses. They are as under :-

(1) Faleshbhai Oliyabhai Vasava, Exh.8,

(2) Kanubhai Jesangbhai Vasava, Exh.14,

(3) Bhikhiben Manilal Vasava, Exh.20,

(4) Sharadaben Dineshbhai, Exh.22,

(5) Vikeshbhai Manilal Vasava, Exh.23,

(6) Asmitaben Vikeshbhai, Exh.24,

(7) Rameshbhai Becharbhai Vasava, Exh.28,

(8) Ramanbhai Mathurbhai Vasava, Exh.29,

(9) Dr.Ketan Sureshbhai Thakkar, Exh.32,

(10) Kantibhai Zinabhai, Exh.36,

(11) Bhagabai Ranajitsinh Ganava, Exh.38.

7. The prosecution also produced and relied on 17 documents viz., scene of offence panchnama at Exh.9, slip signed by the Panchas at Exhs.10 to 13, body position panchnama of the accused at Exh.15, slip signed by the Panchas at Exhs.16 & 17, inquest panchnama at Exh.18, seizure of clothe panchnama at Exh.19, complaint at Exh.21, yadi wrote for drawing the map of scene of offence at Exh.30, map of scene of offence at Exh.31, yadi wrote for performing P.M. to Medical Officer at Exh.33,

P.M.Note at Exh.34, certificate of cause of death at Exh.35, xerox copy of station diary at Exh.37, receipt issued by FSL at Exh.40, Biological report of the FSL at Exh.41 and serological report at Exh.42.

8. After recording of the evidence of the prosecution witnesses was over, the Court below explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section 313 of the Code. In his further statement, he denied the case of the prosecution in entirety. According to him, he has been roped in a false case of death. However, he has neither led any evidence nor did he examine any witness in support of his defence.

9. At the end of trial, the Court below convicted the appellant-accused for having committed offence punishable under Section 302 of the Indian Penal Code and, therefore, he accordingly, passed the judgment and order of conviction and sentence as stated

hereinabove.

10. Being aggrieved by the Judgment and Order of conviction and sentence passed by the Court below, the appellant-accused has preferred this appeal.

11. Before hearing the learned counsel appearing for the respective parties, we have called for the Record & Proceedings from the Court below and on receiving the same, same have been provided to the learned counsel appearing for the respective parties.

12. Today, we have heard learned counsel for the appellant, Mr.N.K. Majmudar and learned Additional Public Prosecutor, Mr.K.P. Raval for the State. We have been taken through the record and proceedings by both the sides.

13. It has been mainly argued by the learned counsel for the appellant-accused, Mr.N.K. Majmudar that in this case, the prosecution has failed to prove the case against the present appellant-accused beyond doubt.

13.1It has been argued that in this case, the motive has not been proved.

13.2It is also argued that there was an enmity between the appellant-accused and family of the deceased and, therefore, the appellant has been falsely involved in the offence in question.

13.3It has been argued that the alleged incident took place early in the morning when the deceased was sleeping outside his house and somebody has given Parai blow to him, wherein the appellant-accused has been falsely involved into the crime in question.

13.4It is also argued that all the witnesses are the relatives of the deceased. Mr.Majmudar has, therefore, urged that the matter requires consideration and the judgment and order of conviction and sentence as pronounced by the Court below requires to be set aside.

14. We have gone through the oral as well as documentary evidence and the reasoned judgment delivered by the Court below shown to us by the learned counsel for the respective parties, more particularly,

paragraph nos.25 and 26 of the judgment.

14.1It is required to be noted that the deceased, the prosecution witnesses and the appellant-accused are from the same community, from the same village and locality and all are known each other since their child hood.

14.2It is required to be noted that the incident in question took place at about 5:30 a.m. and prior to that, altercation took place between the deceased and the appellant-accused and as a result of that, the appellant-accused gave Paria blow on the neck of the deceased, which resulted into the death of the deceased. We are unable to accept the arguments advanced by the learned counsel for the appellant that somebody else has given the Parai blow and as the deceased succumbed to the injuries, the present appellant-accused has been falsely involved into the crime in question because of the existence of enmity between them.

14.3It is required to be noted that P.W.No.3, Bhikhiben Manilal Vasava (Complainant) at Exh.20, P.W.No.4, Shardaben Dineshbhai (wife

of the deceased) at Exh.22, P.W.No.5, Vikeshbhai Manilal Vasava (brother of the deceased) at Exh.24, P.W.No.6, Ashmitaben Vikeshbhai (wife of P.W.No.5) at Exh.24 and P.W.No.7, Rameshbhai Becharbhai Vasva at Exh.28 are the witnesses of incident. Out of aforesaid five witnesses, four witnesses have fully supported the case of the prosecution and P.W.No.7, Rameshbhai Vasava – Exh.28 has partly supported the case of the prosecution. Even complaint, Exh.21 filed by the complainant, who is mother of the deceased (P.W.No.3, Bhikhiben Vasava) also supports the say of the prosecution because same has been filed by the complainant at the earliest opportunity and, therefore, it cannot be said that there is a delay in filing the complaint.

14.4We have gone through the oral evidences of above referred witnesses and the documentary evidence including the cross-examination of the above referred witnesses, but nothing has come out which shake their evidences.

14.5It is required to be noted that as the alleged incident took place early in the morning at about 5:30 a.m., the P.W.Nos.3 to 6 being family members and it being night time, their presence at the scene of offence is natural one and out of five witnesses, three are women. As we have stated above, since they belong to same community and same village and are known to each other since their livelihood, question of misidentification may not be arisen at all and, therefore, the say of the above referred witnesses supports the case of the prosecution.

14.6Over and above, the oral evidences of above referred witnesses also got support from the medical evidence i.e. evidence of P.W.No.9, Dr.Ketan Sureshbhai Thakkar (Medical Officer, Primary Health Centre, Daheli), Exh.32, through whom, the prosecution has also proved the P.M. Note, Exh.34, which also fully supports the say of the prosecution.

14.7Dr.Ketan Thakkar has categorically deposed

that the fatal injury received by deceased is possible by way of muddamal weapon (Parai). As per his deposition, external injuries and internal injuries are antimortem and are sufficient to cause death. In short, in this case, the medical evidence as well as oral evidence of above referred witnesses suppor each other.

14.8Not only that, the panchnama of scene of offence, Exh.9 has been proved by the P.W.No.1, Faleshbhai Oliyabhai Vasava (Panch Witness), Exh.8. The muddamal seized from the place of offence by preparing panchanam has been sent to FSL, wherein the FSL Expert has give their opinion, which has been produced and proved by the prosecution at Exhs.40, 41 & 42 and same has been discussed by the Court below at paragraph no.25 of its judgment, wherein the Court below has categorically dealt with the same after going through Exh.42 i.e. serological report, which shows that muddamal article nos.1, 2, 3, 5, 6, 7 and 9 were having blood stain, which was of

group 'B'. Out of the above referred muddamal, Article Nos.1, 2, 3, 5 and 6, which are seized from the scene of offence including the clothes worn by the deceased at the time of incident also bear blood stain marks, which was of group 'B'. Moreover, the clothes worn by the appellant-accused were also seized, which also bear the blood stain of group 'B' and which also take the accused very near to the crime in question.

14.9It is true that in this case, the blood of the appellant-accused has not been examined, but if the prosecution has placed reliance upon only on that evidence and Court below would have convicted the accused then we would have considered the same.

14.10 Here in this case, there are four eye witnesses apart from the medical evidence supporting the say of the prosecution and this is one more factor and, therefore, we are not giving much more value because the corroborative evidences are on record.

14.11 In view of the above, the prosecution has

proved the case against the appellant-accused beyond doubt and sentenced awarded by the Court below looking to the seriousness of the offence is just, legal and proper.

15. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of **STATE OF KARNATAKA VS. HEMAREDDY** reported in **AIR 1981 SC 1417** which reads as under:-

> ".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

16. In view of the above, since there is no substance in any of the arguments advance by the learned counsel for the appellant-accused, this appeal is required to be dismissed.

17. The appeal is dismissed.

18. R & P are ordered to be sent back forthwith.

Sd/- *Sd/-*

(R.P.DHOLAKIA, J.) ***(K.S.JHAVERI, J.)***

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